

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-013555-jmp

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7 In the Matter of:

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9 LEHMAN BROTHERS HOLDINGS INC., et al.,

10 Debtors.

11 - - - - - x

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13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

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18 July 25, 2013

19 10:05 AM

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21 B E F O R E :

22 HON JAMES M. PECK

23 U.S. BANKRUPTCY JUDGE

24

25

1 Hearing re Three Hundred Forty-Second Omnibus Objection to
2 claims (Employment-Related Claims)[ECF No. 30031]

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4 Hearing re Two Hundred Ninety-Seventh Omnibus Objection to
5 Claims (Invalid or No Blocking Number LPS Claims)[ECF No.
6 27868]

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25 Transcribed by: Dawn South

1 A P P E A R A N C E S :

2 WEIL, GOTSHAL & MANGES LLP

3 Attorneys for the Debtor

4 767 Fifth Avenue

5 New York, NY 10153-0119

6

7 BY: ERIKA DEL NIDO, ESQ.

8 ERIC DAVID KASENENTZ, ESQ.

9 TOBY HERBOTS, ESQ.

10

11 ALSO PRESENT:

12 HOLLY CLACK

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P R O C E E D I N G S

THE COURT: Please proceed.

MS. DEL NIDO: Good morning, Your Honor. Erika Del Nido, Weil, Gotshal & Manges on behalf of Lehman Brothers Holdings, Inc. and its affiliates.

The first matter on the agenda this morning is an uncontested matter, the 342nd omnibus objection to claims, employment related claims, ECF number 30031. This omnibus objection requests that the Court disallow and expunge certain employment-related claims on the grounds that LBHI and its affiliates are not liable for such claims, and/or to reclassify certain claims as equity interests.

Mr. Nicholas Howard has filed claim number 28279 against LBHI in the total amount of approximately \$3.2 million. The claim consists of six different components. Two of these components, a claim for partnership interests in the amount of \$150,000, and a claim for unpaid commissions in the amount of approximately \$362,000 are subject to the 342nd omnibus objection.

Mr. Howard filed a response objecting to the relief requested solely with respect to the portion of its claim for commissions, ECF number 30921.

Mr. Howard submitted no opposition with respect to the portion of his claim for partnership interests.

Upon consultation with Mr. Howard's counsel it was

1 agreed that the portion of Mr. Howard's claim for
2 partnership interests would be brought before the Court for
3 disallowance and that Mr. Howard would not oppose such
4 relief.

5 The hearing with respect to the portion of
6 Mr. Howard's claim for commissions has been adjourned
7 without a date; ECF number 38483.

8 LBHI requests that the Court enter an order
9 disallowing and expunging the portion of Mr. Howard's claim
10 for partnership interests in the amount of \$150,000.

11 THE COURT: I'll do that on a contested basis
12 consistent with the representations that you have made.

13 MS. DEL NIDO: Thank you, Your Honor.

14 We have prepared an order expunging the portion of
15 Mr. Howard's claim that Mr. Howard agrees to be expunged
16 which we are prepared to submit to the Court today.

17 The next item on the agenda is a contested matter
18 which will be handled by my colleague, Eric Kasenetz of
19 Weil.

20 MR. KASENETZ: Good morning, Your Honor. Eric
21 Kasenetz, Weil, Gotshal & Manges on behalf of Lehman
22 Brothers Holdings, Inc.

23 Your Honor, I'll be handling the contested item on
24 today's agenda which relates to the 297th omnibus objection
25 to claims invalid or no blocking number LPS claims.

1 The 297th omnibus objection seeks to disallow and
2 expunge claims based on Lehman program securities that do
3 not include valid blocking numbers. Such claims violate
4 this Court's prior date order.

5 Today we are proceeding as to claim number 19647
6 of Ms. Jeanne-Marie Maltaux.

7 The plan administrator's positions are set forth
8 at length in the omnibus objection and the reply, so I will
9 not repeat all of those arguments, instead I would just like
10 to touch on a few key points that speak directly to the
11 issues with this claim.

12 As this Court is aware the bar date order
13 expressly requires that claims based on Lehman program
14 securities must, among other things, include a blocking
15 number. The claims filing procedures were created in such a
16 way that only one blocking number could be issue for any
17 particular Lehman program security for each clearing agency
18 account holder and only one party would be eligible to
19 receive distributions for each sub-security.

20 Despite these essential safeguards the holder of
21 claim 19647 did not comply with the bar date order as there
22 was no valid blocking number for the Lehman program
23 securities included on the claim. The claimant has not
24 provided a blocking number to date.

25 In accordance with this Court's guidance provided

1 at the November 30th, 2011 claims hearing the plan
2 administrator has gone to great lengths to work with all
3 remaining claimants that failed to provide valid blocking
4 numbers to determine whether alternative documentation could
5 be provided to mitigate the risks related to the claims
6 without blocking numbers. In several cases such
7 reconciliation has been successful and resulted in allowance
8 of claims.

9 With respect to this claim however the plan
10 administrator has concluded that no supporting documentation
11 could be provided by the claimant to reduce the risk of
12 duplication.

13 As explained in the declaration of Holly Clack on
14 behalf of LBHI, and Ms. Clack is in the courtroom today, the
15 plan administrator undertook a detailed review of the claim,
16 the relevant securities, other proofs of claims filed by
17 other claimants, including banks with the same ISEN (ph) and
18 other identifying information.

19 Based on this review there is a high likelihood
20 that the securities on Ms. Maltaux's claim are included on
21 another claim, specifically claim 55408 originally filed by
22 Citibank Belgium. In fact we, LBHI, were able to confirm
23 with Citibank Belgium that Citibank Belgium filed a claim on
24 behalf of Ms. Maltaux for the relevant securities as
25 supported by the declaration of Toby Herbots on behalf of

1 Citibank Belgium, and I believe Mr. Herbots has dialed into
2 the courtroom today --

3 THE COURT: Let's confirm that. Mr. Herbots, are
4 you on the line?

5 MR. HERBOTS: Yes, I am on the line.

6 THE COURT: Okay. Thank you.

7 MR. KASENETZ: Your Honor, Citibank Belgium acted
8 as custodian for securities on behalf of the claimant and
9 filed the claim in a representative capacity on behalf of
10 the claimant.

11 The claim filed by Citibank Belgium included a
12 valid blocking number for the securities allegedly held by
13 Ms. Maltaux, and a portion of the Citibank Belgium claim
14 relating to such securities has been allowed and begun
15 receiving distributions.

16 Citibank Belgium was the record holder of the
17 securities on the books and records of the clearing agency.

18 The bar date order specifically allowed banks to
19 file claims on behalf of beneficial holders, and Ms. Maltaux
20 has not provided any credible evidence that Citibank Belgium
21 was not authorized to file a claim on her behalf.

22 In short, Ms. Maltaux failed to comply with a
23 material provision of the bar date order, and Ms. Maltaux's
24 claim is duplicative of the claim filed by Citibank Belgium
25 which has been allowed and started receiving distributions.

1 The plan administrator should not be required to
2 expend its limited time and resources to conduct additional
3 diligence on this claim. The claimant has not provided any
4 substantive basis to allow her claim and the plan
5 administrator has been unable to resolve the objection
6 consensually with the claimant.

7 With this in mind the plan administrator requests
8 that the 297th omnibus objection to claims be granted as to
9 claim 19647 and that such claim be disallowed and expunged
10 in its entirety.

11 Thank you.

12 THE COURT: You make a strong and persuasive case.
13 Just a couple of questions.

14 There's a letter in my binder from Jeanne-Marie
15 Maltaux. For record purposes that's M-A-L-T-A-U-X. It's a
16 letter dated June 1, 2012. Does the claimant have notice of
17 today's hearing?

18 MR. KASENETZ: Yes, Your Honor. The plan
19 administrator provided actually three forms of notice. The
20 first was a notice to her email address to which she has
21 responded to previously. The second notice was provided to
22 her address in Belgium which was the original address filed
23 with her proof of claim. And third, the plan administrator
24 provided service to -- notice to her -- her new address in
25 Spain, which such address was included on her letter that I

1 believe you have -- you have reviewed.

2 THE COURT: I gather she's living in the Canary
3 Islands.

4 MR. KASENETZ: I cannot confirm exactly where she
5 lives.

6 THE COURT: All right. The only reason I say that
7 that there's a somewhat scandalous reference in the letter
8 to hoping for a tsunami that will engulf Wall Street.

9 She's obviously very perturbed by losses
10 associated with her lien investments and experience.

11 I'm just going to ask if by chance, although she
12 doesn't appear to be on the CourtCall list, Ms. Maltaux is
13 participating in a representative capacity or has someone
14 representing her interests here in court? There's no
15 response.

16 This is in effect an unopposed matter in which you
17 have presented ample support for the relief that you seek.

18 The one area that I have some question involves
19 certain statements made by Holly Clack. In particular she
20 states in paragraph 6 of her declaration:

21 "Based on this information I conclude that the
22 securities claimed in the claim are likely included in the
23 Citi claim. If the claim is allowed LBHI almost certainly
24 will pay twice for the securities."

25 And my question relates to the level of confidence

1 that Ms. Clack has concerning the duplicative nature of the
2 claim brought by Ms. Maltaux and the claim filed by Citi
3 Belgium.

4 If we could just explore that a little bit I'd
5 appreciate it.

6 MR. KASENETZ: Yes, Your Honor. Would you like me
7 to speak on behalf of Ms. Clack or shall Ms. Clack --

8 THE COURT: I think since she's here she can
9 simply provide the explanation as to her level of confidence
10 that in fact we're dealing with duplicative claims.

11 MR. KASENETZ: Of course.

12 THE COURT: And to the extent that Mr. Herbots
13 who's on the line can supplement that I'd be interested in
14 hearing what he has to say.

15 MR. KASENETZ: Of course. Thank you.

16 MS. CLACK: Good morning, Your Honor.

17 THE COURT: How do we know that there's a high
18 likelihood that this is a duplicative claim?

19 MS. CLACK: How do I know that?

20 THE COURT: Yes.

21 MS. CLACK: I know that because I looked at all of
22 the other claims filed for that particular ISEN, and there
23 are about 25 other claims that could include the 50,000
24 notional for which Ms. Maltaux claims on her claim 19647.

25 So the reason that I -- so first of all I believe

1 that there's a very high likelihood that her claim is
2 duplicative of another claim, and the reason that I say that
3 I think it's likely that it's on this Citi Belgium claim,
4 55408, is because of the references that she makes in her
5 correspondence with LBHI, and the fact that Citi Belgium on
6 its claim 55408 claimed about 90 percent of the total
7 outstanding for that ISEN.

8 THE COURT: Okay, thank you.

9 Mr. Herbots, do you have anything to add?

10 MR. HERBOTS: (Indiscernible - 00:13:22), Your
11 Honor. (Indiscernible - 00:13:27).

12 THE COURT: It's difficult to hear given the level
13 of amplification on that call, but I assume that it'll
14 either be picked up on the transcript or others here may
15 have heard it. Did you hear what was said?

16 MR. KASENETZ: I apologize, I did not catch
17 anything that Mr. Herbots said.

18 THE COURT: Mr. Herbots, unfortunately by virtue
19 of appearing by telephone, and I understand the reason for
20 it since you're in Belgium, your testimony is largely
21 analytical, but that's okay, because the declarations that
22 had been submitted, the statements made by Ms. Clack in
23 support of the declaration, the fact that that claimant has
24 not appeared despite notice, and the reasonable conclusion
25 to be drawn that the failure to obtain a blocking number in

1 this instance carries with it not just a technical failure
2 to comply with obligations of claimants under the bar date
3 order but an actual and demonstrable risk of duplicate
4 claims having to be paid.

5 Under the circumstances disallowance and
6 expungement is appropriate and I grant your relief.

7 MR. KASENETZ: Thank you, Your Honor.

8 THE COURT: Okay, thank you. We're adjourned. I
9 just need an order.

10 (Whereupon, these proceedings concluded at 10:21 a.m.)

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I N D E X

RULINGS

Page Line

Three Hundred Forty-Second Omnibus Objection

to claims (Employment-Related Claims)[ECF

No. 30031]

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Two Hundred Ninety-Seventh Omnibus Objection

to Claims (Invalid or No Blocking Number LPS

Claims)[ECF No. 27868]

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn
South

Digitally signed by Dawn South
DN: cn=Dawn South, o, ou,
email=digital1@veritext.com,
c=US
Date: 2013.07.26 10:27:09 -04'00'

AAERT Certified Electronic Transcriber CET**D-408

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: July 26, 2013